

November 12, 2019

New Orleans City Council
1300 Perdido Street, 2nd Floor West
New Orleans, LA 70112

Re: Money Bail Reform

Dear City Council Members:

I write with both concern and hope for the City of New Orleans.

My concern stems from the continuation of practices that have undermined economic mobility for our struggling neighbors for years: (1) conditioning pretrial liberty on the payment of money bail and (2) imposing and collecting fines and fees upon conviction. Money has no place in a system of justice. It undermines public safety, discriminates against people of lower economic status, unnecessarily strips away people's liberty, and leads to the impoverishment of already struggling families and communities.

That these practices continue is of particular concern given the rulings of two federal courts, recently affirmed by unanimous panels of the United States Court of Appeals for the Fifth Circuit. It appears that the judges of our local criminal court do not believe that these rulings require them to change their practices. I see it differently. Although they began as declaratory judgments and not injunctions per se, these rulings definitively state what the Due Process Clause of the 14th Amendment requires and are applicable to all judges of the court, regardless of whether each judge is a named defendant. Moreover, even if the judges would have to violate state statutes in following the federal court rulings, they in fact must do so under the Constitution's Supremacy Clause. It is those very state statutes that create a financial conflict of interest that has been held to violate the due process rights of persons who come before the court expecting justice. As the Supremacy Clause states, the 14th Amendment is part of "the supreme law of the land" and "the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding."

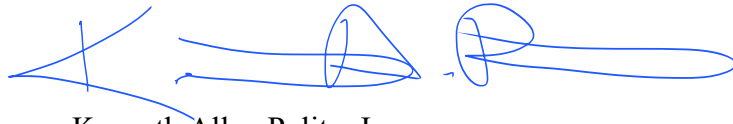
Those two rulings (*Caliste v. Cantrell* and *Cain v. White*), when read in their entirety, hold that judges in New Orleans may not impose money bail (because they have an institutional conflict of interest in doing so in a lawful manner) and may not enforce the collection of any fine or fee that benefits the court (because of a similar conflict of interest).

The overwhelming majority of my legal career has been in our federal system. That system eliminated money bail several decades ago. Instead, pretrial detention rests on the determination of the defendant's risk of flight or danger to the community. Moreover, the federal system does not use any fees (whether on bail or conviction) to fund its courts. Neither money bail nor conviction fines and fees are necessary to effectively promote

public safety, to hold people accountable for criminal activity that is proven, or to support the court system. As a matter of both moral and legal necessity, those practices must end.

My hope lies in the understanding that you have before you a comprehensive plan to assist the judges in serving the people of New Orleans, maintaining funding for court operations, and getting on the right side of the U.S. Constitution. The plan laid out in "Paid in Full" provides a blueprint for you to do this through your adoption of a budget for the City of New Orleans. I strongly urge you to provide the additional funding for the court necessary to replace every dollar lost from ending money bail and conviction fines and fees, but that you do so only with the understanding that the court will fully implement the 12 recommendations set out in "Paid in Full." Both the court and the people of New Orleans will benefit. Just as important, it offers my hometown of New Orleans the opportunity serve as a national leader in bail reform, moving away from the money injustice that has pervaded legal systems across the country for far too long.

Sincerely,

A handwritten signature in blue ink, consisting of a stylized 'K' followed by a series of loops and a long horizontal stroke.

Kenneth Allen Polite, Jr.
Former United States Attorney
Eastern District of Louisiana